IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 11797 of 2005
With
CRIMINAL MISC.APPLICATION No. 11798 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL KIRITKUMAR MULCHANDBHAI & 2 - Applicant(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR YF MEHTA for Applicant(s) : 1 – 3 in Cr.M.A. No.11797/05.
MR SP MAJMUDAR for applicants in Cr.M.A.No.11798/05.
MR MR MENGDEY for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2, 4,
MR.HIREN M MODI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/10/2007

ORAL JUDGMENT

These petitions involve identical questions.

They have, therefore, been heard together and are being disposed of by this common judgment.

2. The petitioners were the principal borrowers who had borrowed certain sums of money for business purpose from respondent No.3, Sarvoday Nagrik Sahakari Bank Ltd. Against the petitioners and large number of other borrowers of the bank, a criminal complaint bearing C.R.No.122/05 came to be filed on 1.5.2005 before Visnagar Police Station. In the complaint, it is stated inter alia that large number of persons had taken loans from the bank during the period between 1998 and 2003 by breaching the requirement of granting such loans. In the complaint, it is stated that such loans were given by committing large scale irregularities and keeping the rules and regulations of the Bank aside. It is further stated that when the borrowers could not pay the interest and the principal sum borrowed, larger loans were released to cover the unpaid dues. It is further stated that the irregularities were committed also with respect to guarantors of such loans. It is stated that without verifying whether there is sufficient property to permit the person to stand as a guarantor, in some cases by inflating the value of the property, guarantees were accepted, due to which the guarantors had defaulted and did not fulfill promise of repayment of loans. It is, therefore, stated that such persons have defrauded the bank, committed cheating and criminal breach of trust. The complaint carried an annexure in which details of such borrowings, details of principal borrowers and

guarantors, etc. were mentioned. It is not in dispute that the petitioners were named as principal borrowers in the annexure to the complaint.

3. The petitioners sought to challenge the filing of the complaint on the ground that no criminal case is made out and the dispute, if at all between the parties, is one of civil nature. On behalf of the petitioners, it was contended that the bank had lodged summary suit in the Lavad court before filing the complaint. It was, therefore, contended that the criminal complaint is filed only with a view to seeking recovery and in reality it is case of civil suit. It is further contended that the complaint is vague and general and discloses no offence against the petitioners.

3.1 Reliance was placed on a decision of the Apex Court in the case of **Hridaya Ranjan Prasad Verma v. State of Bihar**, (2000) 4 SCC 168 wherein it is observed that there is a thin line between cheating and breach of contract. Reliance was also placed on a decision of the Apex Court in the case of **Pepsi Foods Ltd. v. Special Judicial Magistrate**, decided on 4.11.97 wherein it was observed that the High Court should not shy away in exercise of its jurisdiction under Article 226 and 227 of the Constitution and section 482 of the Criminal Procedure Code.

4. On the other hand, learned APP Shri Mengdey

for the State and learned advocate Shri Modi for the complainant Bank opposed the petitions. They drew my attention to a decision of the learned single Judge of this Court in Criminal Misc. Application No.6547 of 2005 wherein some of the other co-accused had approached this Court seeking quashing of the complaint which came to be dismissed by the judgment dated 26.10.2005.

5. Having heard the learned advocates appearing for the parties, I find that in exercise of powers under section 482 of the Criminal Procedure Code, it is not possible to quash the complaint. Reading the complaint as a whole and taking the allegations made therein on the face value, it cannot be stated that the complaint discloses no offence. I have briefly outlined some of the allegations made in the complaint. Significantly, the allegations include those of inflating the properties offered for security to cover the loans released by the Bank. It is stated that such loans were released irregularly and in breach of rules and regulations of the bank. It is stated that when the borrowers failed to repay the principal amount and the interest accumulated, further larger loans were sanctioned. All these allegations, if established would certainly lead to criminal offence. It is true that a consolidated complaint against large number of persons have been filed and it would have been desirable if the bank segregated the cases and filed individual complaints. However, that by itself would not permit me to quash the complaint in its entirety against the

petitioners. It is also true that for breach of contract, criminal prosecution would not be permissible. However, in the present case, at this stage, only on the basis of allegations made in the complaint, it is not possible to conclude that the case is one of breach of contract and not of any criminal intent.

6. It is not in dispute that substantial amount of loan with accumulated interest is yet to be repaid by the petitioners. This Court had considered a similar situation in above mentioned decision dated 26.10.2005 and relying on the observations made in an earlier order, the Court found that the petition cannot be accepted. I see no difference in the circumstances of this case. Even otherwise, I am of the opinion that this is not a case for quashing. Investigation is yet in progress and stopped primarily because of certain orders passed by this Court.

7. These observations are made at this stage on the basis of the allegations made in the complaint and if at a later stage the petitioners approach the Trial Court for appropriate relief, the same shall be decided on available material on record at that stage.

8. Considering all these aspects of the matter, I find that these petitions are required to be dismissed and are hereby dismissed. Rule is

discharged. Interim relief, if any, stands vacated.

(Akil Kureshi, J.)

(vjn)